

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE  
AT GREENEVILLE

EDWARD J. WEBB, JR. )  
                        )  
v.                     )         NO. 2:04-CV-66  
                        )  
CARITEN INSURANCE COMPANY     )

**ORDER**

Presently before this court for acceptance are the March 23, 2005, Report and Recommendation [R&R1] [Doc. 67] and the March 29, 2005, Report and Recommendation [R&R2] [Doc. 72] of Magistrate Judge Dennis H. Inman in the above-titled case.

In the R&R1, Magistrate Judge Inman recommended the defendant be held personally liable to the plaintiff for a statutory penalty of \$12,550.00. The magistrate judge found that “Cariten’s lack of good faith in advising the various individuals who communicated with Cariten on Mr. Webb’s behalf that a written authorization from Webb was needed *effectively* constituted a failure or refusal to provide the requested information as contemplated by 29 U.S.C. § 1132 (c)(1).” Section 1132 (c)(1) of 29 U.S.C. provides that a Plan Administrator can be assessed a penalty for failing or refusing to comply “with a request for any information which such administrator is required by this sub-chapter to furnish to a participant or beneficiary . . . .” The magistrate judge then concluded Cariten should be liable for a statutory penalty for 251 days at a rate of \$50 per day, totaling \$12,550.00, for

failing to notify Mr. Webb's attorneys that written authorization was needed from Mr. Webb before certain information could be shared with them. According to Magistrate Judge Inman, he recommended "only one-half the daily maximum penalty [of \$100] because the amount" seemed sufficient to gain the attention of Cariten.

In the R&R2, Judge Inman recommended the plaintiff be awarded \$54,000.00 in attorneys fees. Judge Inman accepted this court's previous declarations that the defendant acted in bad faith. [Docs. 31, 32]. He then accepted as "well within the range of reasonableness" the plaintiff's attorney's stated rate of \$225 per hour. Judge Inman then found that the plaintiff's attorney worked about 240 hours on the case. Multiplying the \$225 rate by 240 hours worked yielded a result of \$54,000.00.

After a careful review of the record as a whole, this court **ACCEPTS** the March 23, 2005, Report and Recommendation and the March 29, 2005, Report and Recommendation for the reasons expressed in the Reports and Recommendations. The defendant is **LIABLE** for a statutory penalty totaling \$12,550.00, and the plaintiff is **AWARDED** attorneys fees of \$54,000.00.

ENTER:

s/Thomas Gray Hull  
THOMAS GRAY HULL  
SENIOR U. S. DISTRICT JUDGE